



Department of Health

ANDREW M. CUOMO
Governor

HOWARD A. ZUCKER, M.D., J.D.
Commissioner

SALLY DRESLIN, M.S., R.N.
Executive Deputy Commissioner

January 31, 2019

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Chinwe Offor, M.D.

Ike Agwuegbo, Esq.
575 Lexington Avenue, 4th Floor
New York, New York 10022

Gerard A. Cabrera, Esq.
Bureau of Professional Medical Conduct
New York State Department of Health
90 Church Street, 4th Floor
New York, New York 10007

RE: In the Matter of Chinwe Offor, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 19-022) of the Professional Medical Conduct Administrative Review Board in the above referenced matter. This Determination and Order shall be deemed effective upon receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine **if said license has been revoked, annulled, suspended or surrendered**, together with the registration certificate. Delivery shall be by either **certified mail or in person** to:

Office of Professional Medical Conduct
New York State Department of Health
Riverview Center
150 Broadway – Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

This exhausts all administrative remedies in this matter [PHL §230-c(5)].

Sincerely,

A black rectangular redaction box covering the signature of James F. Horan.

James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH: cmg
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
ADMINISTRATIVE REVIEW BOARD FOR PROFESSIONAL MEDICAL CONDUCT

In the Matter of

Chinwe Offor, M.D. (Respondent)

Administrative Review Board (ARB)

A proceeding to review a Determination by a Committee
(Committee) from the Board for Professional Medical
Conduct (BPMC)

Determination and Order No. 19- 022

Before ARB Members D'Anna, Koenig, Grabiec, Wilson and Milone
Administrative Law Judge James F. Horan drafted the Determination

For the Department of Health (Petitioner): Gerard A. Cabrera, Esq.
For the Respondent: *Pro Se*

After a hearing below, a BPMC Committee found the Respondent committed professional misconduct in providing treatment to four infants. The Committee voted to revoke the Respondent's license to practice medicine in New York State (License). In this proceeding pursuant to New York Public Health Law (PHL) § 230-c (4)(a)(McKinney 2018), the Respondent asks the ARB to nullify the Committee's Determination, alleging that the proceeding denied the Respondent due process, the Petitioner failed to prove the charges and the Committee imposed an excessive penalty. After reviewing the hearing record and the parties' review submissions, the ARB affirms the Committee in full.

Committee Determination on the Charges

Pursuant to PHL § 230 *et seq*, the BPMC and its Committees function as a duly authorized professional disciplinary agency of the State of New York. The Committee in this matter conducted a hearing into charges that the Respondent violated New York Education Law (EL) §§ 6530(3-6) & 6530((32)(McKinney Supp. 2018) by committing professional misconduct under the following specifications:

- practicing medicine with negligence on more than one occasion,
- practicing medicine with gross negligence,
- practicing medicine with incompetence on more than one occasion,
- practicing medicine with gross incompetence, and
- failing to maintain accurate patient records.

The charges related to the Respondent's care for four neo-natal patients (A-D) at Mercy Medical Center (Mercy). The Respondent failed to file a timely answer to the Petitioner's Statement of Charges, so the charges were deemed admitted pursuant to PHL § 230(10)(c)(2). The Committee then considered the appropriate penalty to impose. The Committee heard testimony from the Respondent and from the Petitioner's expert witness, Jesus Jaile-Marti, M.D.

The Committee found that the Respondent worked as a neonatologist at Mercy. In December 2013, Mercy placed the Respondent on focused review for failure to meet professional standards and Mercy removed the Respondent's title as Assistant Director of Neonatology. The Respondent has not practiced medicine since Mercy terminated the Respondent in August 2014.

The Committee stated that neonatologists have direct contact and responsibility to their patients and must understand the physiology of newborns. The Committee found Dr. Jaile, a neonatologist with 27 years experience in caring for newborns, to be well qualified to provide an opinion about the care the Respondent provided to Patients A-D. The Committee found that Dr. Jaile provided detailed testimony about the Respondent's deviations from acceptable care standards in treating Patients A-D. The Committee found the Respondent suffers from significant and fundamental deficits in her fund of knowledge about the physiology of newborns, which for a clinician, renders her unable to diagnose, assess, treat and manage her patients competently. The Committee found further that the Respondent diagnosed her patients incorrectly and ordered contraindicated medications and treatment. In addition, the Committee found that when the patients did not immediately respond to a treatment or medication, the Respondent would quickly change course without a rationale for doing so. The Committee concluded that the Respondent failed to recognize when it was necessary to consult with other providers who could

provide assistance or better care for the Respondent's patients and failed to recognize when to seek to transfer her patients to a facility that could provide needed care.

In addressing the Respondent's testimony, the Committee found that the Respondent lacked awareness and understanding of her repeated failures to meet acceptable standards of care. The Committee also found that the Respondent showed no remorse and displayed an unwillingness to accept responsibility for her actions. The Respondent claimed that she did consult with other providers and that the other providers agreed with her treatment and management of the patients. The Committee found little or no information in patient records concerning such consultations. The Respondent testified that she met or exceeded acceptable care standards in her management and treatment of patients. The Committee found, however, that the Respondent's own testimony and patient records demonstrated that she did not meet acceptable care standards.

In considering what sanction to impose, the Committee noted that the Respondent cares sincerely about her patients and that the Respondent is academically accomplished, but the Committee found the Respondent's failures as a clinician significant and pervasive. The Committee considered whether the Respondent could safely practice medicine after completing another fellowship, with extensive continuing medical education followed by a period of probation with a practice monitor. The Committee concluded that retraining would be futile given the Respondent's adamant and unwavering defense of her actions, the number of years the Respondent has practiced medicine and the Respondent's disinterest and unwillingness to receive training to improve her practice. The Committee concluded that revocation constitutes the only appropriate penalty to protect the people of New York State.

Review History and Issues

The Committee rendered their Determination on September 11, 2018. This proceeding commenced on September 20, 2018, when the ARB received the Respondent's Notice requesting a Review. The record for review contained the Committee's Determination, the hearing record,

the Respondent's brief and the Petitioner's reply brief. The record closed when the ARB received the reply brief on November 5, 2018.

The Respondent requested that the ARB invalidate the Committee's Determination. The Respondent alleged that the hearing denied her due process due to: a defective hearing notice that failed to include patient charts, the Petitioner's failure to disclose exculpatory evidence, the denial of an opportunity to call witnesses and present evidence and the refusal to allow the Respondent to seek evidence in the hands of a third party. The Respondent argued further that she suffered prejudice due to the length of the investigation and proceeding against her. The Respondent presented evidence from outside the hearing record, including names and other information concerning 134 infants the Respondent treated while under focused review at Mercy. The Respondent challenged the testimony by Dr. Jaile and argued that the Committee failed to consider all evidence at the hearing, failed to consider that numerous other physicians treated Patients A-D and failed to consider evidence of malice toward the Respondent. The Respondent contended that the Committee imposed an excessive penalty.

The Petitioner replied that the Committee's Administrative Officer ruled at a pre-hearing conference that the Respondent failed to file a timely answer, which meant the charges were deemed admitted pursuant to PHL § 230(10)(c)(2). The Petitioner stated exhibits were entered without objection and the Respondent was advised that she could call witnesses and testify on her own behalf. The Petitioner noted the Respondent testified on the second hearing day, but called no other witnesses. During her testimony, the Respondent answered "no" to the question asking whether she required retraining. The Petitioner argued that in the Review Brief, the Respondent refused to accept responsibility and attempted to enter matters from outside the hearing record. The Petitioner requested that the ARB affirm the Committee.

ARB Authority

Under PHL §§ 230(10)(i), 230-c(1) and 230-c(4)(b), the ARB may review Determinations by Hearing Committees to determine whether the Determination and Penalty are consistent with the Committee's findings of fact and conclusions of law and whether the Penalty is appropriate and within the scope of penalties which PHL §230-a permits. The ARB may substitute our judgment for that of the Committee, in deciding upon a penalty Matter of Bogdan v. Med. Conduct Bd. 195 A.D.2d 86, 606 N.Y.S.2d 381 (3rd Dept. 1993); in determining guilt on the charges, Matter of Spartalis v. State Bd. for Prof. Med. Conduct 205 A.D.2d 940, 613 NYS 2d 759 (3rd Dept. 1994); and in determining credibility, Matter of Minielly v. Comm. of Health, 222 A.D.2d 750, 634 N.Y.S.2d 856 (3rd Dept. 1995). The ARB may choose to substitute our judgment and impose a more severe sanction than the Committee on our own motion, even without one party requesting the sanction that the ARB finds appropriate, Matter of Kabnick v. Chassin, 89 N.Y.2d 828 (1996). In determining the appropriate penalty in a case, the ARB may consider both aggravating and mitigating circumstances, as well as considering the protection of society, rehabilitation and deterrence, Matter of Brigham v. DeBuono, 228 A.D.2d 870, 644 N.Y.S.2d 413 (1996).

The statute provides no rules as to the form for briefs, but the statute limits the review to only the record below and the briefs [PHL § 230-c(4)(a)], so the ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, 243 A.D.2d 847, 663 N.Y.S.2d 361 (3rd Dept. 1997).

A party aggrieved by an administrative decision holds no inherent right to an administrative appeal from that decision, and that party may seek administrative review only pursuant to statute or agency rules, Rooney v. New York State Department of Civil Service, 124 Misc. 2d 866, 477 N.Y.S.2d 939 (Westchester Co. Sup. Ct. 1984). The provisions in PHL §230-c provide the only rules on ARB reviews.

Determination

The ARB has considered the record and the parties' briefs. We affirm the Determination on the charges. The Respondent's failure to file an answer meant the charges were deemed admitted. We also affirm the Committee's Determination on penalty. We discuss below the Respondent's arguments concerning due process/prejudice, the submission of material from outside the record, the Respondent's comments on the evidence and Dr. Jaile's testimony and the penalty.

The ARB Authority above notes that the ARB reviews the Committee's findings and conclusions. The Respondent's arguments to the ARB on due process/prejudice do not deal with the Committee's findings and conclusions, but instead address rulings by the Committee's Administrative Officer and the investigative process in this case. The arguments raise concerns, if they are accurate, although the Petitioner's Reply challenges the arguments' accuracy. The ARB concludes that these arguments raise issues outside our authority. The Respondent may appeal to the courts following this review and we refer the Respondent to raise these issues with the courts on such an appeal.

The Respondent submitted material to the ARB from outside the hearing record. Once again, the ARB notes that our function is to review the findings and conclusions of the

Committee, so we may not review anything that was not before the Committee for their consideration and for the other party to address. The ARB will consider no evidence from outside the hearing record, Matter of Ramos v. DeBuono, (supra).

The Respondent challenged the testimony by Dr. Jaile and argued that the Committee failed to consider all the evidence from the record and evidence of malice toward the Respondent. We have noted above that the charges against the Respondent were deemed admitted and the hearing consisted only in a penalty phase. The Committee gave extensive reasons why they credited testimony by Dr. Jaile and rejected the testimony by the Respondent. The Committee had the chance to observe the witnesses testify. The ARB members all served on hearing committee's previous to our current service and we all know the difference between seeing live testimony and reading testimony from a transcript. The ARB defers to the Committee, as the finder of fact, in their judgment about credibility between the witnesses. The ARB rules that the evidence the Committee found credible provided preponderant evidence supporting the Committee's Determination.

The Committee credited Dr. Jaile's testimony that the Respondent deviated from acceptable care standards in treating Patients A-D and the Committee found the Respondent suffers from significant and fundamental deficits in her fund of knowledge about the physiology of newborns, which for a clinician, renders her unable to diagnose, assess, treat and manage her patients competently. The Committee found further that the Respondent diagnosed her patients incorrectly, ordered contraindicated medications/treatment and quickly changed course without a rationale for doing so, if a patient failed to respond to treatment immediately. The Committee also found that the Respondent failed to recognize when it was necessary to consult with other providers who could provide assistance or better care for her patients and failed to recognize

when to seek to transfer her patients to a facility that could provide needed care. In addition, the Committee found that the Respondent lacked awareness and understanding of her repeated failures to meet acceptable standards of care, showed no remorse and showed no willingness to accept responsibility for her actions. Finally, in addition to Dr. Jaile's testimony criticizing the Respondent's practice, the Committee found the Respondent's own testimony and patient records demonstrated that she did not meet acceptable care standards.

The Committee considered whether the Respondent could practice medicine safely after completing another fellowship, with extensive continuing medical education, followed by a period of probation with a practice monitor. The Committee concluded that retraining would be futile given the Respondent's adamant and unwavering defense of her actions, the number of years the Respondent has practiced medicine and the Respondent's disinterest in and unwillingness to receive training to improve her practice. The Committee concluded that revocation constitutes the only appropriate penalty to protect the people of New York State. The ARB agrees with the Committee.

ORDER

NOW, with this Determination as our basis, the ARB renders the following ORDER:

1. The ARB affirms the Committee's Determination that the Respondent committed professional misconduct.
2. The ARB affirms the Committee's Determination to revoke the Respondent's License.

Peter S. Koenig, Sr.
Steven Grabiec, M.D.
Linda Prescott Wilson
John A. D'Anna, M.D.
Richard D. Milone, M.D.

In the Matter of Chinwe Offor, M.D.

Linda Prescott Wilson, an ARB Member concurs in the Determination and Order in the
Matter of Dr. Offor.

Dated: 28 January 2019

A large black rectangular redaction box covering the signature of Linda Prescott Wilson.

Linda Prescott Wilson

In the Matter of Chinwe Offor, M.D.

Peter S. Koenig, Sr., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Offor.

Dated: January 23, 2019


Peter S. Koenig, Sr.

In the Matter of Chinwe Offor, M.D.

Steven Grabiec, M.D., an ARB Member concurs in the Determination and Order in the
Matter of Dr. Offor.

Dated: 1/23, 2019


Steven Grabiec, M.D.

In the Matter of Chinwe Offor, M.D.

Richard D. Milone, M.D., an ARB Member concurs in the Determination and Order in
the Matter of Dr. Offor.

Dated July 23, 2019




Richard D. Milone, M.D.

In the Matter of Chinwe Offor, M.D.

John A. D'Anna, M.D., an ARB Member concurs in the Determination and Order in the Matter of Dr. Offor.

Dated: 1-23, 2019


John A. D'Anna, M.D.